

JUL 28 2015

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIA JOSE MORALES-ESPANA,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 11-70720

Agency No. A095-717-514

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 21, 2015**

Before: CANBY, BEA, and MURGUIA, Circuit Judge.

Maria Jose Morales-Espana, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an immigration judge's ("IJ") decision denying her application for asylum, withholding of removal, and protection under the Convention Against Torture

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

(“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo questions of law and review for substantial evidence the agency’s factual findings. *Wakkary v. Holder*, 558 F.3d 1049, 1056 (9th Cir. 2009). We deny in part, dismiss in part, and grant in part the petition for review, and we remand.

The record does not compel the conclusion that Morales-Espana established changed or extraordinary circumstances to excuse the delay in filing her asylum application. *See* 8 C.F.R. § 1208.4(a), (5); *see also Husyev v. Mukasey*, 528 F.3d 1172 ,1181-82 (9th Cir. 2008). Thus, we deny the petition for review with respect to asylum.

We lack jurisdiction to consider Morales-Espana’s contentions regarding CAT relief because she did not appeal the IJ’s denial of her CAT claim to the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004). Thus, we dismiss the petition as to Morales-Espana’s CAT claim.

In denying withholding of removal, however, the BIA found Morales-Espana failed to establish past persecution or a fear of future persecution on account of a protected ground. When the BIA issued its decision in this case, it did not have the benefit of this court’s decisions in *Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013) (en banc), *Cordoba v. Holder*, 726 F.3d 1106 (9th Cir. 2013), and *Pirir-Boc v. Holder*, 750 F.3d 1077 (9th Cir. 2014), or the BIA’s

decisions in *Matter of M-E-V-G-*, 26 I. & N. Dec. 227 (BIA 2014), and *Matter of W-G-R-*, 26 I. & N. Dec. 208 (BIA 2014). Thus, we remand Morales-Espana's withholding of removal claim to determine the impact, if any, of these decisions. See *INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam). In light of this remand, we do not reach Morales-Espana's remaining challenges to the agency's denial of her withholding of removal claim.

Each party shall bear its own costs for this petition for review.

**PETITION FOR REVIEW DENIED in part; DISMISSED in part;
GRANTED in part; REMANDED.**